IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3876 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HUSSAIN AHMED MOHMED ALI MANIAR

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3876 of 2003

MR ZUBIN F BHARDA for Petitioner No. 1

MR AD OZA, PP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/06/2003

ORAL JUDGEMENT

Rule. Mr.A D Oza learned Public Prosecutor

appears and waives service of notice of Rule on behalf of respondent State of Gujarat.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") in order to challenge an order dated 23/04/03, recorded by the learned Additional Sessions Judge, Fast Track Court at Navsari, in Sessions Case No. 99/2002 under which the learned trial Judge sent the entire matter back to the learned Judicial Magistrate First Class at Navsari with a direction to see that the order of committal is passed in respect of the five accused persons.

3. It appears from the record that in all five accused persons were chargesheeted before the learned Judicial Magistrate First Class, Navsari and the case against them was registered as Criminal Case No.2810/2002. However, it appears that two accused persons were required to attend the Court at Delhi and therefore, they were sent to the said Court at Delhi. But, the said Court did not return the said two accused persons to the learned Judicial Magistrate First Class at Navsari. The offence punishable against all the five accused persons is one triable exclusively by the Court of Sessions. Therefore, the learned Magistrate was required to commit the case to the Court of Sessions under Section 209 of the said Code. Since, the said two accused persons were not available with the Court, the learned Chief Judicial Magistrate directed that the case against the present petitioners, who are accused no.1, 2 and 3 before the trial court, may be committed to the Court of Sessions, according to law under Section 209 of the said Code.

4. The learned Additional Sessions Judge found that the said order of the learned Magistrate dated 06/07/02 in Criminal Case No.2810/2002 was not legal and proper and the learned Magistrate could not have separated the cases of those two accused persons. Therefore, the learned Additional Sessions Judge sent the papers back to the learned Magistrate, directing him to commit the case in respect of the five persons.

5. It is an admitted fact that those two accused persons were busy with the conduct of cases before the Court at Delhi, and therefore, they were not available for trial with the learned Magistrate. Therefore, the learned Magistrate was not in a position to hear those two accused persons and it seems that he found it difficult to commit the case against them, without

hearing them. Therefore, he committed the case against the present petitioners who are the three accused persons before the trial court being accused no.1, 2 and 3 and committed the case against them to the Court of Sessions.

6. On hearing, it is found that the said order was not illegal in any way whatsoever. Therefore, the learned Additional Sessions Judge was not justified in directing the learned Magistrate to commit the case against all the five accused persons. The learned Additional Sessions Judge should have registered the Sessions Case against the three accused persons, who are the petitioners before this Court and it seems that the case against them has also been registered as Sessions Case No.99/2002. In that case, the learned Additional Sessions Judge was required to proceed ahead against the present petitioners in accordance with law. Instead of doing so, the learned Additional Sessions Judge has sent the papers back to the Magistrate for committing the case with respect to all the five accused persons.

7. In view of the above background and in view of the facts and circumstances of the case, it is clear that the said direction of the learned Additional Sessions Judge is not legal and proper and therefore, it is required to be interfered with at this level, in this petition, by exercising inherent jurisdiction of this Court.

8. In above view of the matter, this petition is allowed. The order passed by the learned Additional Sessions Judge dated 23/04/03 in Sessions Case No.99/2002 is set aside and the learned Additional Sessions Judge is directed to restore the said Sessions Case being Sessions Case No.99/2002 against the present three petitioners accused before him. The learned Additional Sessions Judge will be at liberty to proceed against them in accordance with law. It is, further, directed that the learned Magistrate will be at liberty to pass appropriate order under Section 209 of the said Code, for committing the remaining two accused persons, as and when occasions may arise, and if and when the learned Magistrate finds it proper to do so. The petition is accordingly allowed. Rule is made absolute to the above extent.

(D. P. Buch, J.)
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